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### An Obituary of the Federal Estate Tax

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# AN OBITUARY OF THE FEDERAL ESTATE TAX

M.C. Mirow\* & Bruce A. McGovern\*\*

On June 7, 2001, the Federal Estate Tax suffered an untimely death at the age of eighty-five.<sup>1</sup> The tax's demise marks the passing of a controversial figure in American public life.

The tax had recently grown unpopular. Despite its special provisions to protect family farms and businesses, the tax had been accused of jeopardizing the survival of many of these interests by placing them into precarious financial straits.<sup>2</sup> Its real bite, however, was felt by the nation's wealthiest families.<sup>3</sup> Its

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1. See Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. No. 107-16, § 501(a), 115 Stat. 38, 69 (to be codified at I.R.C. § 2210(a)). This obituary may be somewhat premature. To fit within budgetary constraints, Congress repealed the Estate Tax only with respect to decedents dying after December 31, 2009. See *id.* Furthermore, absent additional congressional action, the Estate Tax will rise from the dead in 2011. See *id.* § 901(a)(2), (b), 115 Stat. at 150.

Transitional provisions leading to the tax's complete abolition in 2010 address a number of significant issues. The top Estate Tax rate will be gradually reduced from the present fifty-five percent to forty-five percent for decedents dying in 2007. See *id.* § 511(a)–(c), 115 Stat. at 70 (to be codified at I.R.C. § 2001(c)). The Estate Tax exemption amount will be gradually increased from the present \$675,000 to \$3.5 million for decedents dying in 2009. See *id.* § 521(a), 115 Stat. at 71 (to be codified at I.R.C. § 2010(c)). The provisions also implement a complex carryover basis regime that takes effect in 2010. See *id.* § 542(a), 115 Stat. at 76–81 (to be codified at I.R.C. § 1022); *infra* note 8 (discussing new carryover basis rules).

2. See, e.g., President George W. Bush's Weekly Radio Address, 37 WEEKLY COMP. PRES. DOC. 12, 463–508 (Mar. 17, 2001) (“On principle, every family, every farmer and small business person should be able to pass on their life’s work to those they love. So we abolish the death tax.”); Press Release, Senator Charles E. Grassley (Mar. 15, 2001), available in LEXIS, Fedtax library, TNT file (“Repealing the federal death tax is critical to the financial well-being and survival of family farms and small businesses.”). See generally

unpopularity led to a number of attempts on its life.<sup>4</sup> Indeed, in the past few years the tax's life was miraculously spared twice through the efforts of President Clinton, who used his veto power to repel congressional ambushes.<sup>5</sup> In both cases, the presidential veto saved the life of the tax's long-time companion, stepped-up basis.<sup>6</sup> Its new lease on life proved to be short-lived, however, because along with the repeal of the Estate Tax, Congress ended the current stepped-up basis rule<sup>7</sup> and implemented a complex carryover basis regime whose burdensome administrative, tracing, record keeping, and reporting requirements have been described by one commentator as "the four horsemen of the carryover basis apocalypse."<sup>8</sup>

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Charles Davenport & Jay A. Soled, *Enlivening the Death-Tax Death-Talk*, 84 TAX NOTES 591, 609–18 (1999) (discussing estate tax burden on business).

3. See WILLIAM G. GALE & JOEL SLEMROD, WE TAX DEAD PEOPLE 6–7, 13–14 (Office of Tax Policy Research, University of Michigan Business School, Working Paper 2000–11, 2000). In 1998, slightly over two percent of decedents were subject to the estate tax. See JOINT COMM. ON TAXATION, DESCRIPTION AND ANALYSIS OF PRESENT LAW AND PROPOSALS RELATING TO FEDERAL ESTATE AND GIFT TAXATION (JCX-14-01) 21, tbl. 2 (2001).

4. See, e.g., Death Tax Elimination Act of 2000, H.R. 8, 106th Cong. § 101 (2000); Taxpayer Refund and Relief Act of 1999, H.R. 2488, 106th Cong. § 601 (1999).

5. See Death Tax Elimination Act of 2000—Veto Message from the President of the United States, 146 CONG. REC. H7240 (daily ed. Sept. 6, 2000); Taxpayer Refund and Relief Act of 1999—Veto Message from the President of the United States, 145 CONG. REC. H8613 (daily ed. Sept. 23, 1999); GALE & SLEMROD, *supra* note 3, at 3.

6. See Death Tax Elimination Act of 2000, *supra* note 4, § 102; Taxpayer Refund and Relief Act of 1999, *supra* note 4, § 602; see also JOINT COMM. ON TAXATION, *supra* note 3, at 17–18; GALE & SLEMROD, *supra* note 3, at 20. For the current stepped-up basis provision see I.R.C. § 1014(a) (Supp. IV 1998) (repealed with respect to decedents dying after Dec. 31, 2009).

7. See Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. No. 107-16, § 541, 115 Stat. at 76 (to be codified at I.R.C. § 1014(f)) (repealing stepped-up basis rule with respect to decedents dying after Dec. 31, 2009).

8. Stefan F. Tucker, *Thoughts on Radical Estate and Gift Tax Reform*, 91 TAX NOTES 163, 165–66 (2001). Under the new carryover basis rules, the basis of property acquired from a decedent generally is the lesser of the property's fair market value on the date of the decedent's death or the decedent's adjusted basis in the property. See Economic Growth and Tax Relief Reconciliation Act of 2001 § 542, 115 Stat. at 76 (to be codified at I.R.C. § 1022(a)(2)). The estate's executor, however, is directed to increase the basis of certain property, as determined under the general rule, by up to an aggregate amount of \$1.3 million and, in the case of property that passes to a surviving spouse, by an additional \$3 million. See *id.* (to be codified at I.R.C. § 1022(b)–(c)). The basis of property acquired from a decedent thus can be increased, up to the property's fair market value, by the portion of the \$1.3 million and \$3 million basis increases that the executor allocates to the property. See *id.* (to be codified at I.R.C. § 1022(d)(2)–(3)). For discussion and criticism of the carryover basis rules see Joseph M. Dodge, *What's Wrong with Carryover Basis under H.R. 8*, 91 TAX NOTES 961, 963–73 (2001). For a discussion of the broader implications for the federal tax system of replacing federal transfer taxes with a carryover basis regime, see Karen C. Burke & Grayson M.P. McCouch, *Death Without Taxes?*, 20 VA. TAX REV. 499, 510–18 (2001).

Some saw the tax as providing a benefit in addition to its raising of revenue: its reduction of massive concentrations of wealth in America.<sup>9</sup> Yet, support for the tax had not always followed class lines.<sup>10</sup> Some of the nation's most wealthy families had long embraced the tax for social reasons. At the turn of the twentieth century, Andrew Carnegie proposed drastic limitations on the passage of wealth at one's death.<sup>11</sup> Even within the past few months, 120 wealthy Americans—including those with surnames of Gates, Soros, and Rockefeller—ran an advertisement in the *New York Times* that urged the avoidance of the tax's demise.<sup>12</sup> Nonetheless, Jeremy Bentham and Karl Marx's endorsement of such a tax has always tainted its supporters with radical hues.<sup>13</sup>

The tax was born in 1916 as the child of fiscal preparations for the United States' entry into World War I.<sup>14</sup> It was the descendant of numerous other short-lived federal estate and inheritance taxes that were imposed mostly during wartime<sup>15</sup> and were the product of heated debates over whether to impose a tax on inherited assets or on the estate itself.<sup>16</sup> The Estate Tax proved to be heartier than its forebears. It emerged as the nation's fisc sought to lessen its reliance on customs and excise taxes that had become weakened by war.<sup>17</sup> The individual

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9. See SIDNEY RATNER, *TAXATION AND DEMOCRACY IN AMERICA* 355 (1967); EDWIN R.A. SELIGMAN, *ESSAYS IN TAXATION* 127 (3d ed., 1931); Louis Eisenstein, *The Rise and Decline of the Estate Tax*, 11 *TAX L. REV.* 223, 224–30 (1956); David M. Hudson, *Tax Policy and the Federal Taxation of the Transfer of Wealth*, 19 *WILLAMETTE L. REV.* 1, 13–15 (1983); James R. Repetti, *Democracy, Taxes, and Wealth*, 76 *N.Y.U. L. REV.* 825, 849–50, 856–58 (2001).

10. See Edward J. McCaffery, *Grave Robbers: The Moral Case Against the Death Tax*, 85 *TAX NOTES* 1429, 1440 (1999) (discussing public opinion on the estate tax).

11. See RATNER, *supra* note 9, at 234–37.

12. See *N.Y. TIMES*, Feb. 18, 2001, § 4, at 13, available at <http://www.responsiblewealth.org>.

13. See SELIGMAN, *supra* note 9, at 127–31; Eisenstein, *supra* note 9, at 224. Although Bentham objected to describing his plan for limits on testamentary freedom and the abolition of intestate succession as a “tax,” he “virtually advocated a graduated tax” by proposing that the government confiscate varying percentages of a decedent's assets. SELIGMAN, *supra* note 9, at 129.

14. See Rev. Act of 1916, ch. 463, §§ 200–212, 39 Stat. 756, 777–80.

15. See JOINT COMM. ON TAXATION, *supra* note 3, at 10–11.

16. See ROBERT H. MONTGOMERY ET AL., *MONTGOMERY'S FEDERAL TAXES: ESTATES, TRUSTS, AND GIFTS* 456–57 (1952). For a good overview of the federal estate and inheritance taxes that existed before 1916, including figures on rates of tax and revenue collected, see BARRY W. JOHNSON & MARTHA BRITTON ELLER, *FEDERAL TAXATION OF INHERITANCE AND WEALTH TRANSFERS* 4–10, available at <http://www.fedworld.gov/pub/irs-soi/inhwltr.pdf> (last modified Mar. 8, 2001).

17. See GALE & SLEMROD, *supra* note 3, at 4; JOHN R. LUCKEY, *A HISTORY OF FEDERAL ESTATE, GIFT, AND GENERATION-SKIPPING TAXES* 7 (Congressional Research Service Report for Congress 95-444A, Washington, D.C., 1995); JOINT COMM. ON TAXATION, *supra* note 3, at 11.

states initially were less than cordial to the new Estate Tax but were somewhat appeased when the tax was amended to provide a credit for state death taxes.<sup>18</sup>

The tax's youthful years were modest. In its original form, the tax took only a small portion of estates, ranging from one percent of net estates of \$50,000 or less up to ten percent of net estates over \$5,000,000.<sup>19</sup> Its maximum rates, however, were quickly ratcheted up.<sup>20</sup> In 1918, the tax benefited from a new provision that permitted a charitable deduction.<sup>21</sup> Its early youth was punctuated, at age four, by the common childhood disease of tax legislation, a challenge to its constitutionality. Under the careful diagnosis and treatment of Oliver Wendell Holmes, the disease was dispelled and the tax held constitutional by the United States Supreme Court.<sup>22</sup> Throughout its early years, the tax was subject to attack on the grounds that it would adversely affect the American economy.<sup>23</sup> Secretary of the Treasury Andrew W. Mellon warned that as a result of the tax it might take "only two or three generations until private ownership of property would cease to exist."<sup>24</sup>

In 1924, Congress brought home a new member of the family, the Gift Tax, which wandered off in 1926,<sup>25</sup> only to reappear as lasting legislation in 1932.<sup>26</sup> While in their youth, sibling rivalry kept the Estate and Gift Taxes from

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18. See Rev. Act of 1924, ch. 234, § 301(b), 43 Stat. 253, 304; see also MONTGOMERY, *supra* note 16, at 457. For a discussion of the credit for state death taxes and statistics regarding the credits claimed, see JOINT COMM. ON TAXATION, *supra* note 3, at 40–41. For decedents dying after Dec. 31, 2004, Congress repealed the credit and replaced it with a deduction. See Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. No. 107-16, § 532(a)–(b), 115 Stat. 38, 73 (to be codified at I.R.C. §§ 2011(g), 2058).

19. See Rev. Act of 1916, ch. 463, § 201, 39 Stat. 756, 777; see also LUCKEY, *supra* note 17, at 2–7. The net estate was the value of the estate after being reduced by a \$50,000 exemption, debts, and various expenses. See Rev. Act of 1916, § 203; see also RATNER, *supra* note 9, at 356.

20. See SELIGMAN, *supra* note 9, at 140.

21. See Rev. Act of 1918, ch. 18, § 403(a)(3), 40 Stat. 1057, 1098; see also MONTGOMERY, *supra* note 16, at 459.

22. See *New York Trust Co. v. Eisner*, 256 U.S. 345 (1921).

23. See RATNER, *supra* note 9, at 396–99, 424–25, 428; Eisenstein, *supra* note 9, at 232; Hudson, *supra* note 9, at 16.

24. Eisenstein, *supra* note 9, at 232 (quoting ANDREW W. MELLON, TAXATION: THE PEOPLE'S BUSINESS 119 (1924)). Of Mellon, noted tax historian Randolph E. Paul wrote, "The new Secretary was prepared to act upon the conscientious belief that his official duty was the conservation and protection of wealth. His philosophy was simple, completely coherent, and at times almost coldly savage. It never varied. There was a mystical righteousness about tax reduction." RANDOLPH E. PAUL, TAXATION IN THE UNITED STATES 125 (1954).

25. See Rev. Act of 1926, ch. 27, § 1200, 44 Stat. 9, 125.

26. See Rev. Act of 1932, ch. 209, §§ 501–532, 47 Stat. 169, 245–59; see also GERALD R. JANTSCHER, TRUSTS AND ESTATE TAXATION 2 (1967). From its earliest days, the Gift Tax's harsh possibilities were softened by a lifetime exclusion and annual per donee exclusion. For example, in 1924 when the tax was created, it had a \$50,000 life-time exclusion and an annual exclusion of \$500 per donee. See LUCKEY, *supra* note 17, at 9. The

cooperating completely, even when on the same team. The Treasury Department worked diligently to get them to function together in the 1940s and 1950s.<sup>27</sup> The American Law Institute later joined the Treasury Department in attempting to facilitate their coordination and placement into a unified scheme.<sup>28</sup> This harmonization was complete only in their middle age upon the enactment of the Tax Reform Act of 1976.<sup>29</sup>

From 1918 to the mid-1920s, the Estate Tax experienced the changes and search for identity that are common among adolescents. After rate reductions in 1918, its maximum rate was increased to forty percent in 1924 and reduced to twenty percent in 1926.<sup>30</sup> The type of property subject to the tax generally was broadened during this period.<sup>31</sup> It continued to be subject to partisan attacks.<sup>32</sup>

From the mid-1920s to the 1940s, the Estate Tax rates were increased in fits and starts so that beginning in 1941 the tax was assessed at between three and seventy-seven percent, depending on the size of the net estate.<sup>33</sup> President Franklin D. Roosevelt played an important role in strengthening the tax during this period.<sup>34</sup> Rate increases were often urged by those who saw the promise of wealth redistribution riding with the tax.<sup>35</sup> Amendments in 1942 increased the Estate Tax exemption, required life insurance proceeds to be included in the gross estate, and attempted—in what turned out to be an unworkably complex scheme—to equalize the treatment of those residing in community property and non-community

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per donee exclusion was raised to \$3,000 in 1942 and to \$10,000 beginning in 1982. *See id.* at 11, 19. The constitutionality of the Gift Tax was upheld in *Bromley v. McCaughn*, 280 U.S. 124 (1929).

27. *See* U.S. TREASURY DEP'T, ADVISORY COMM. ON ESTATE & GIFT TAXATION, FEDERAL ESTATE AND GIFT TAXES: A PROPOSAL FOR INTEGRATION AND FOR CORRELATION WITH THE INCOME TAX (1947); JANTSCHER, *supra* note 26, at 2 n.7; PAUL, *supra* note 24, at 543–44.

28. *See* CHARLES L.B. LOWNDES ET AL., FEDERAL ESTATE AND GIFT TAXES 4–6 (2d ed., 1974).

29. *See* Pub. L. No. 94-455, §§ 2001–2010, 90 Stat. 1520, 1846–97; *see also* LUCKEY, *supra* note 17, at 13. The Act repealing the Estate Tax disrupts the coordination of the Estate and Gift Taxes. The legislation leaves the Gift Tax in place, but with an exemption amount capped at \$1 million beginning in 2002. *See* Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. No. 107-16, § 521(b), (e), 115 Stat. 38, 71–72 (to be codified at I.R.C. § 2505(a)(1)); *supra* note 1 (discussing repeal of Estate Tax and setting out rate reductions and exemption increases).

30. *See* JOINT COMM. ON TAXATION, *supra* note 3, at 12; LUCKEY, *supra* note 17, at 9–10.

31. *See* JOINT COMM. ON TAXATION, *supra* note 3, at 12.

32. *See* PAUL, *supra* note 24, at 134, 139–40.

33. *See* Rev. Act of 1941, ch. 412, § 401, 55 Stat. 687, 704; *see also* LUCKEY, *supra* note 17, at 11.

34. *See* Eisenstein, *supra* note 9, at 235–36; Hudson, *supra* note 9, at 19–21.

35. *See* PAUL, *supra* note 24, at 180; RATNER, *supra* note 9, at 466–67, 470–72.

property states.<sup>36</sup> In 1948, Congress abandoned its earlier complex scheme and substituted a marital deduction that permitted estates to deduct the value of all property passing to a surviving spouse, subject to a limit of fifty percent of the adjusted gross estate.<sup>37</sup>

With fiscal demands lessened after World War II, the tax led a quiet life during the 1950s and 1960s. Indeed, a noted biographer of the tax in 1955 prophetically stated,

The estate tax, I believe, is in a period of decline. ... If the past is a guide to the future, the tax should continue to ail for some time. ... It scarcely evokes any friendly interest in Congress.... For twenty years the tax had a friend in the Treasury. Now that friend is gone too. The tax fares poorly when the economy is in high gear.<sup>38</sup>

Later in its life, during the 1970s and 1980s, the tax underwent important transformations.<sup>39</sup> Far from considering retirement, the tax began a brief association with radicals such as carryover basis,<sup>40</sup> pushed the envelope with an unlimited marital deduction,<sup>41</sup> and mellowed in its treatment of family farms and businesses.<sup>42</sup> Nevertheless, as Cicero reminds us, as old age approaches, one contemplates mortality. “For nature has given us a place of entertainment, not of residence.”<sup>43</sup> With this on its mind, the tax turned its attention to generation skipping transfers, a subject on which it reached some degree of closure in the Tax Reform Act of 1986.<sup>44</sup> In 1981, the tax’s influence began to wane through

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36. See JOINT COMM. ON TAXATION, *supra* note 3, at 13; LUCKEY, *supra* note 17, at 11–12; PAUL, *supra* note 24, at 322.

37. See JOINT COMM. ON TAXATION, *supra* note 3, at 13; LUCKEY, *supra* note 17, at 12; PAUL, *supra* note 24, at 496–97.

38. Eisenstein, *supra* note 9, 255–56.

39. See Hudson, *supra* note 9, at 22–32.

40. In the Tax Reform Act of 1976, Pub. L. No. 94-455, § 2005, 90 Stat. 1520, 1872, Congress enacted a provision under which one’s basis in property received from a decedent was the decedent’s basis at the time of the decedent’s death, with certain adjustments. This is commonly referred to as a “carryover basis.” The new provision never became effective. Congress postponed its effective date and later repealed the provision retroactively. See Crude Oil Windfall Profit Tax Act of 1980, Pub. L. No. 96-223, § 401, 94 Stat. 229, 299. See generally Burke & McCouch, *supra* note 8, at 513, 527–35 (discussing concerns underlying Congress’s enactment and subsequent repeal of carryover basis rule). As discussed earlier, Congress has just enacted a new carryover basis regime that takes effect in 2010. See *supra* note 8 (discussing new carryover basis rules).

41. See I.R.C. § 2056(a) (1994).

42. See, e.g., I.R.C. §§ 2032A, 6166 (1994 & Supp. IV 1998) (amended 2001). See generally JOINT COMM. ON TAXATION, *supra* note 3, at 14–17; LUCKEY, *supra* note 17, at 15–24.

43. CICERO, ON OLD AGE, ¶ 54 (E.S. Shuckburgh trans., 1909–1914), available at <http://www.bartleby.com/9/2/> (last visited Mar. 23, 2001).

44. See Pub. L. No. 99-514, §§ 1431–1433, 100 Stat. 2085, 2717–2732; LUCKEY, *supra* note 17, at 16, 21. Congress repealed the tax on generation skipping transfers with respect to transfers occurring after Dec. 31, 2009. See Economic Growth and

amendments designed to reduce the number of estates subject to the tax, such as annual increases in the unified estate and gift tax credit.<sup>45</sup> Despite provisions designed to prevent circumvention, the tax was, for a time, deftly avoided by brilliant transactional attorneys through strategies such as sale of securities to employee stock option plans<sup>46</sup> and a method of putting the tax on ice, the Estate Tax freeze.<sup>47</sup>

The tax's last years were marked by increased stability and an expanding sense of generosity. The tax's top rate settled at fifty-five percent in 1993.<sup>48</sup> The Estate Tax exemption amount increased to \$625,000 in 1998, \$650,000 in 1999, \$675,000 in 2000 and 2001, and at the time of the tax's death, the exemption amount was scheduled to increase gradually to \$1 million beginning in 2006.<sup>49</sup> Subject to certain limits, interests in qualifying family owned businesses were allowed to escape the tax's grasp.<sup>50</sup>

In the fullness of the tax's maturity, many of the nation's wealthy began to regard the tax as a plague. It earned the disparaging approbation "The Death Tax."<sup>51</sup> Of course, death itself was not subject to tax.<sup>52</sup> Furthermore, the transfer of assets at death has served sovereign revenues in the Anglo-American legal tradition for at least 1,000 years.<sup>53</sup> The tax was charged as being unfair, taxing the

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Tax Relief Reconciliation Act of 2001, Pub. L. No. 107-16, § 501(b), 115 Stat. 38, 69 (to be codified at I.R.C. § 2664) (repealing I.R.C. §§ 2601-2663).

45. See LUCKEY, *supra* note 17, at 17.

46. See, e.g., I.R.S. Notice 87-13, 1987-1 C.B. 432 (Q & A 23); Lee A. Sheppard, *Bentsen and Rostenkowski Introduce ESOP Correction*, 34 TAX NOTES 846 (1987).

47. See William Blatt, *The American Dream in Legislation: The Role of Popular Symbols in Wealth Tax Policy*, 51 TAX L. REV. 287, 294-325 (1996).

48. See Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, § 13208(a), 107 Stat. 312, 469 (current version to be codified at I.R.C. § 2001(c)(1)); *supra* note 1 (discussing gradual rate reductions through 2007).

49. See Taxpayer Relief Act of 1997, Pub. L. No. 105-34, § 501(a)(1)(B), 111 Stat. 788, 845 (current version to be codified at I.R.C. § 2010(c)); *supra* note 1 (discussing increases in exemption amount through 2009).

50. See Taxpayer Relief Act of 1997, § 502(a), 111 Stat. at 847-52 (current version at I.R.C. § 2057(a)-(i) (Supp. IV 1998)) (to be repealed in 2004). This provision, which allows a deduction for certain qualified family-owned businesses, has been repealed with respect to estates of decedents dying after December 31, 2003. See Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. No. 107-16, § 521(d), 115 Stat. 38, 72 (to be codified at I.R.C. § 2057(j)).

51. See, e.g., *Clinton Logic Aside, Death Tax Is Larceny*, ATLANTA J. & CONST., Sept. 12, 2000, at 20A; *Study Proves Death Tax Is Bad Economic Policy*, SEATTLE TIMES, Dec. 28, 1998, at B4; *supra* note 2 (referring to other sources using the term "death tax").

52. See, e.g., Andrew Sullivan, *Child Care*, NEW REPUBLIC, Mar. 19, 2001, at 6 ("No matter what George W. Bush says, there is no 'death tax' in America. Dead people can no more pay taxes than they can vote (Cook County, excepted, of course).").

53. See, e.g., J.H. BAKER, AN INTRODUCTION TO ENGLISH LEGAL HISTORY 274-76 (3d ed., 1990); S.F.C. MILSOM, HISTORICAL FOUNDATIONS OF THE COMMON LAW 105-10 (2d ed., 1981).



virtues of saving and thrift while rewarding the vice of consumption, producing compliance costs equal to its revenue, and being punitive in its operation by resulting in a rate of tax of up to eighty percent in some situations.<sup>54</sup> There are unconfirmed reports that the “lock-in” effect of the tax discouraged people from dying and thereby prevented heirs from putting assets to more efficient uses.

According to those present at the scene, the tax’s last words were borrowed from President Franklin D. Roosevelt: “The transmission from generation to generation of vast fortunes by will, inheritance, or gift is not consistent with the ideals and sentiments of the American people.”<sup>55</sup>

The loss of the tax is mourned by the nation’s charities, who benefited from the deduction for charitable contributions.<sup>56</sup> Politicians in the House and Senate reportedly are particularly sad to witness the demise of the tax, which for many years served as a reliable catalyst for campaign contributions aimed at achieving its repeal.

The Estate Tax is survived by the Federal Income Tax, the Federal Gift Tax, the American College of Trust and Estate Counsel, numerous irrevocable Crummey Trusts, several law faculty members pondering next semester’s course offerings, and a host of complex transitional issues for which the estate tax bar is exceedingly grateful. In lieu of flowers, contributions may be sent to the U.S. Treasury, 1500 Pennsylvania Avenue, NW, Washington, D.C. 20220.

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54. JOINT ECON. COMM., THE ECONOMICS OF THE ESTATE TAX (Dec. 1998), available at <http://www.house.gov/jec/fiscal/tx-grwth/estattax/estattax.htm>; see also JOHNSON & ELLER, *supra* note 16, at 17–21.

55. Hudson, *supra* note 9, at 20 (quoting President Roosevelt’s Special Message to Congress, *reprinted in* 1939-1 C.B. (part 2) 643).

56. See JOINT COMM. ON TAXATION, *supra* note 3, at 37–39 (discussing issue of effect of estate taxes on charitable bequests). According to one study, “[i]n 1997, of the 329 taxable estates with gross estates in excess of \$20 million, 182 made charitable contributions and those that did contributed an average of over \$41 million!” GALE & SLEMROD, *supra* note 3, at 18.